

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 56	DATE	11/29/2004
CASE TITLE	WALTER WELLS vs. CITY OF CHICAGO, et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

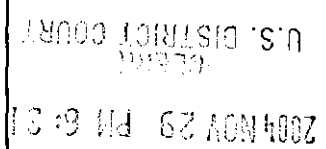

**MOTION:**

## MEMORANDUM OPINION AND ORDER

**DOCKET ENTRY:**

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion And Order. Defendants City of Chicago's motion to dismiss is granted in part and denied in part. Count one is wholly dismissed, while count two is dismissed as against the City, but remains against Daniel Fernandez.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.		number of notices	<b>Document Number</b>  20
<input type="checkbox"/> No notices required.		NOV 30 2004 date docketed	
<input type="checkbox"/> Notices mailed by judge's staff.		 docketing deputy initials	
<input type="checkbox"/> Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices.		mailing deputy initials	
<input type="checkbox"/> Mail AO 450 form.			
<input type="checkbox"/> Copy to judge/magistrate judge.			
LG	courtroom deputy's initials	Date/time received in central Clerk's Office	

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>WALTER WELLS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>No. 04 C 56</b>
	)	
<b>CITY OF CHICAGO and DANIEL</b>	)	
<b>FERNANDEZ,</b>	)	
	)	
<b>Defendants.</b>	)	

**DOCKETED**  
NOV 30 2004

**MEMORANDUM OPINION AND ORDER**

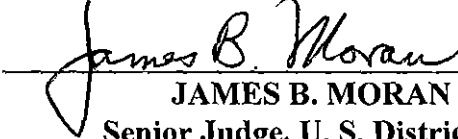
Plaintiff claims that the City, through its agent, Daniel Fernandez, removed personal belongings of his from a property on March 6, 2003, in violation of due process. He also claims that he owns the property and that the defendants demolished the house situated there, in violation of due process. The defendants move to dismiss. We grant the motion by the City, but, for now, deny in part the motion by Fernandez.

The exhibits attached to the defendants' response suggest the following scenario: Fernandez is an assistant corporation counsel who sought court orders for the removal of junk and the like from the property. He got them. They were thereafter vacated when plaintiff entered the picture, but not until after March 6, 2003. Plaintiff also sought to prevent the demolition of the house, but he could not satisfy the state court that he owned the property, and the house was demolished pursuant to court order. If that is the correct scenario, then both counts surely fail. It seems unlikely that an assistant corporation counsel personally removed the personal property and failed to secure it, and his conduct as a corporation counsel raises immunity issues.

But exhibits attached to a response to a motion to dismiss cannot be considered. They are the stuff of a summary judgment motion. We have to look at the complaint.

The complaint is brief. While plaintiff is correct that he need not satisfy any heightened pleading standards, the complaint does not suggest any ongoing City policy or what it might be. The Monell claims against the City are dismissed. Assuming that the claims against Fernandez are brought in his individual capacity, the loss of personal property claimed in Count I is foreclosed by the Parratt doctrine, see Doherty v. City of Chicago, 75 F.3d 318, 323 (7<sup>th</sup> Cir. 1996). Plaintiff does not allege, much less explain, why state post-deprivation remedies are inadequate. Count I is dismissed. Count II is dismissed as against the City, but remains against Fernandez.

Nov. 29, 2004.

  
JAMES B. MORAN  
Senior Judge, U. S. District Court